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MARCIA L. DOUBET LAW FIRM PO BOX 422859 KISSIMMEE, FL 34742			EXAMINER BATES, KEVIN T	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/654,786
Filing Date: September 04, 2003
Appellant(s): KAMINSKY ET AL.

Marcia L. Doubet
Reg. No. 40,999
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 2, 2007 appealing from the Office action mailed July 9, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0055908	Brown et al.	3-2003
2004/0172455	Green et al.	9-2004

2003/0046421

Horwitz et al.

3-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (2003/0055908) in view of Horwitz (2003/0046421), and in further view of Green (2004/0172455).

Regarding claims 1, 28, and 29, Brown teaches a method of using policy information in responding to arrival of instant messages (Paragraph 42), comprising steps of:

defining, by the IM user, policy information specifying criteria for responding to arrival of instant messages (Paragraph 66; 83; 94-97);

using the defined policy information, upon arrival of an instant message from an IM sender not already participating in an IM session with the IM user, and determining based on whether the user is busy or can be bothered, whether the window message should be displayed or just stored (Paragraph 60; 67).

Brown does not explicitly indicate determining whether any of a selected list of application programs are active by the IM user or when the IM window is not to be displayed, placing an icon in the buddy list next to the buddy name of sender of the message, where the icon can be activated to display the stored message.

Horvitz teaches a system for determining whether to alert the user of incoming IM messages based on a profile that is dynamically created by the system (Abstract), part of that profile is determining the current application the user is working on (Figure 34, the application in focus). With the combination of learning which user activities should not be interrupted and what application the user is now focusing on is equivalent to the list of applications that is present in the claims.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Horvitz's teaching of a dynamic profile that monitor's user activity in Brown to allow Brown's system to respond dynamically to the user's changing activities.

Green teaches a application with a buddy list that includes using icons next to names on the buddy list that indicate when messages are stored from that user on the buddy list and when that icon is selected the unread messages are displayed for the user (Paragraph 10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Green's teaching of using an icon do indicate to the user messages are stored and have not yet been ready by the user, in Brown's system in order to allow image indication of the unread messages while not being a distraction to the user.

Regarding claim 9, Brown teaches the method according to claim 1, wherein the policy information is specified as a set of rules (Paragraph 80).

Regarding claim 15, Brown teaches the method according to claim 14, wherein a audible indicator is generated when a new IM window is not displayed (Figure 12, element 166).

(10) Response to Argument

The appellant argues that Brown does not teach defining policy information specifying criteria for responding to arrival of instant messages (¶12 of the Appeal Brief filed December 2, 2007 Hereinafter "the Brief"), that the policy information comprises a list of selected application programs (¶15-16), or programmatically determine whether any of the selected applications are currently executing (¶15-16).

The examiner disagrees:

In the 35 U.S.C. 103(a) rejection the examiner is relying on Brown to teach the user profile and determining whether to open a new IM window or not based on the user's status. The user profile is taught in ¶60, 65-67, where the user specifies or defines a level of message priority. The determination of whether the incoming message is a high enough is made show in Figure 12, where Brown teaches many window treatment options about how the user should be notified of an incoming message.

Brown does not teach any information that the window treatment or user profile contains any considerations about a list of applications are being executed on the

computing device. Horvitz is being relied upon to teach the idea of the list of applications that are being executed on the computing device.

The appellant argues that Horvitz does not disclose a list of selected application programs that are being executed on the computer device ¶¶17-40.

The examiner disagrees:

Horvitz teaches a complicated system that attempts to monitor a user's activities and behaviors to determine whether the user should be interrupted with an incoming message (Abstract). As part of Horvitz's system, he includes looking at certain factors in attempt to determine the user's activities (¶263), among these activities include recent application history, application in focus, and automated scene analysis (Figure 34). Figure 38, goes on to teach other factors including current user activity and graphics content.

It is almost impossible to monitor the previously mentioned activities without being aware of which applications are operating on the user's computer. In ¶¶24-25, the appellant argues that there is a distinction between monitoring the application that the user is actively using and having a list of applications that are currently being executed on the computer device. It seems hard to consider the system being able to monitor which exact application the user is currently focused on without being aware of what is being executed on the user's system. The examiner contends that for the system to know what is the user's application history and what the user is actively focused on the

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system must keep track of the applications on the user's machine and it uses that information to determine the user's activities.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

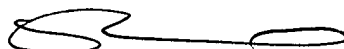
Respectfully submitted,

/Kevin Bates/

Kevin Bates

Examiner, Art Unit 2153

Conferees:


LINNE A. BROWNE
APPEAL PRACTICE SPECIALIST, TCAS
TECHNOLOGY CENTER 2100


GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100